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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended)

and)

CC Docket No. 96-149

Regulatory Treatment of LEC Provision)
of Interexchange Services Originating)
in the LEC's Local Exchange Area)

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REPLY

Teleport Communications Group Inc. ("TCG") hereby replies to comments filed in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding that address the matters discussed in TCG's Comments.

In its Comments, TCG explained that the non-accounting safeguards required by Sections 271 and 272 of the Telecommunications Act of 1996 - designed to afford CLECs a reasonable opportunity to compete in the local exchange market - would be rendered meaningless if an RBOC's in-region interLATA service affiliate is also permitted to provide local exchange service. TCG indicated that the RBOCs are already seeking to circumvent the purpose and limitations of the 1996 Act in this manner, noting that PacBell and Ameritech interLATA affiliates have been seeking state authority to provide local exchange

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service.¹ Accordingly, TCG requested that the Commission clarify that, pursuant to Section 272 of the 1996 Act, no RBOC affiliate may obtain authority to provide local exchange and in-region, interLATA service before the separate affiliate requirement sunsets. Similarly, TCG argued that any RBOC affiliate offering a full panoply of local exchange services should be prohibited from offering in-region interLATA service.

TCG further suggested that, in conjunction with adopting its proposed Computer III-type non-accounting safeguards, the Commission should require the RBOCs to file quarterly reports concerning service requests received from their affiliates and competitors and providing information to the Commission pertaining to the rates, terms and conditions under which such services were provided, pursuant to Section 272(e). In implementing Section 272(b), TCG also urged the Commission to prohibit the RBOCs and their separate affiliates from sharing officers and employees and to require the affiliate to stand on its own credit history. In addition, in enforcing its structural and non-discrimination safeguards, TCG urged the Commission to adopt an expedited complaint procedure whereby the complainant would have the burden of establishing a prima facie case, with the burden of proving that no discrimination has occurred residing with the RBOC since

1. Indeed, in a Michigan proceeding concerning the local exchange application of Ameritech Communications Inc. (ACI), an affiliate of Ameritech Corp., Ameritech blatantly states that it has created a separate affiliate to provide local exchange services in Michigan, and claims that this affiliate is not an RBOC subject to RBOC requirements. Application of Ameritech Communications Inc. for License to Provide Basic Local Exchange Service in Michigan, MPSC Case No. U-11053, Ameritech Communications Inc. Comments at 4, dated August 16, 1996.

it has the bulk of the essential information concerning the practices it engaged in relative to competitors and its affiliate.

Not surprisingly, the RBOCs disagree with TCG's recommendations, and instead advance a series of proposals designed to circumvent the thrust of the 1996 Act and to afford themselves the maximum flexibility to engage in a variety of discriminatory actions. For example, U S West, Ameritech and BellSouth argue that affiliates of RBOCs may engage in local exchange service because Section 272 permits the subsidiary to market or sell the BOC's local exchange service provided the BOC permits other entities to market or sell its service, unless the affiliate actually displaces the RBOC as its successor or assignee.² The Commission should reject these RBOC proposals.

The RBOCs' interpretation of the statute is mistaken and turns the 1996 Act on its head because it would allow the RBOCs to completely evade the strict requirements of the Act that the RBOCs keep their interLATA and local exchange operations separate. Furthermore, the RBOCs misread the joint marketing language in Section 272(g) in contending that this provision supports their argument. Their interpretation would improperly enable the RBOCs to engage in blatant discrimination in providing their interLATA affiliate local exchange services on unreasonably favorable terms.

2. U S West Comments at 53-58; Ameritech Comments at 45-46; BellSouth Comments at 33-34.

Other parties agree with TCG's interpretation of the 1996 Act and dispute the RBOCs' position herein. Thus, the National Cable Television Association ("NCTA") argues that the provision by a BOC affiliate of local exchange and in-region services "directly contravenes the structural separation between local and long distance required by the 1996 Act" and would "provid[e] a vehicle for a BOC to avoid its obligations and requirements under Section 251(c)."³ Similarly, the California Cable Television Association explains that the RBOCs proposal would be "in effect re-creating the very structure that Congress had barred" and that the RBOC "affiliate . . . should be subject to the full force of the safeguards as is its parent BOC."⁴

If, however, the Commission disagrees with TCG and declines to preclude the RBOCs' interLATA affiliate from providing local exchange services, it should at a minimum adopt AT&T's proposal that the RBOCs announce at least three months in advance the terms under which it would make local exchange service available to its affiliate to ensure that all parties have an equal opportunity to market and sell the BOCs' services.⁵ Moreover, to the extent that the RBOCs are allowed to provide such local exchange services to their affiliates, the Commission should adopt TCG's recommendation and provide that the RBOCs be required to file

3. Comments of NCTA at 10, 11.

4. California Cable Television Association Comments at 9.

5. See AT&T Comments at 54-56.

quarterly reports on the rates, terms, and conditions under which they provide services to their affiliates.

The RBOCs acknowledge, as they must, that Section 272(b)(3) requires their affiliates to have separate officers and directors, but they wrongly contend that the provision does not prohibit the affiliate from using administrative and support services provided by the parent BOC.⁶ The RBOCs' interpretation, however, would defeat the statutory intent of achieving structural separation between the parent and the affiliate, and therefore many parties appropriately oppose the RBOCs' position.⁷ Accordingly, as AT&T explains, "[t]he sharing of personnel between the BOC and the affiliate for service development, planning, marketing, and operations would create the very integration that is prohibited by the statute."⁸

The Commission should also reject the RBOCs' contention that, under its expedited complaint procedure, the complainant should be required both to establish both a prima facie case and to sustain the burden of proof.⁹ As many parties point out, however, it is entirely reasonable for the burden of proof to shift to the RBOCs once a prima facie case has been established because the RBOC is in

6. See, e.g., NYNEX Comments at 24-35; Bell Atlantic Comments at 6-7; SBC Comments at 6-7; Pacific Telesis Comments at 21-23.

7. See, e.g., AT&T Comments at 24-26; MCI Comments at 27-29; Time Warner Comments at 16-20.

8. AT&T Comments at 24.

9. See, e.g., U S West at 59-63; Ameritech Comments at 72-78; BellSouth at 35-38.

the best position to demonstrate that it has not engaged in discriminatory treatment of its affiliate vis-a-vis competitors.¹⁰ It should not be burdensome for the RBOCs to present this information, particularly if they have been collecting such information for purposes of filing the quarterly reports as suggested by TCG.

For these reasons, the Commission should adopt the proposals presented herein by TCG.

Respectfully submitted,

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10. See, e.g., AT&T Comments at 47-52; MCI Comments at 52-57; Sprint Comments at 55-58; Time Warner Comments at 35-39.